

SERVICE DATE – JUNE 12, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42125

E.I. DUPONT DE NEMOURS AND COMPANY
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: June 11, 2012

This decision grants requests by Norfolk Southern Railway Company (NSR), and E.I. du Pont de Nemours and Company (DuPont) to modify the procedural schedule.

By decision served on February 24, 2011, the Board established a procedural schedule for DuPont's challenge to the reasonableness of rates established by NSR. In multiple decisions, the most recent served on January 13, 2012 (January 2012 Decision), the Board granted a motion by DuPont to modify the procedural schedule.

On May 24, 2012, NSR filed a motion to modify the procedural schedule. NSR argues that DuPont's errata pleading, filed 17 days after the opening evidence, necessitates the modification it seeks here.¹ In its reply filed May 29, 2012, DuPont asserts that the 30-day extension sought by NSR is excessive, and argues that NSR should only be allowed an additional 17 days to prepare reply evidence and arguments, the same amount of time as the lag between the opening evidence and the errata. DuPont further argues that, if the Board grants an extension of the procedural schedule, DuPont should be provided an additional week to submit rebuttal evidence to compensate for the Christmas and New Year's holidays.

NSR's motion to modify the procedural schedule will be granted, as modified below, and the procedural schedule in this proceeding will be revised. The parties express widely divergent opinions regarding the importance of the materials submitted in DuPont's errata. As in the January 2012 Decision, these differences underscore the unusual scope and complexity of this proceeding. Even if the data submitted by DuPont in the errata were not central to the case, as DuPont asserts, it would still be important to ensure that the defendant in a case of this size has enough time, after assembling a full set of information, to develop its evidence.

¹ NSR states that it reserves its right to seek further modification of the procedural schedule should it be necessary.

DuPont's request for an extension of time will also be granted. Therefore, the Board will adopt the following modified procedural schedule:

Defendant's Reply	September 28, 2012
Complainant's Rebuttal	January 28, 2013
Closing Briefs	March 8, 2013

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The procedural schedule in this proceeding is revised as described above.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.